

REVIEWS

THE REPORT OF THE COMMISSION ON STATE GOVERNMENT ORGANIZATION
TO THE GENERAL ASSEMBLY AND THE GOVERNOR OF CONNECTICUT.
Hartford, Conn., 1950. Pp. 154.

It is not surprising that the Hoover Commission set a pattern for "little Hoover Commissions" at the state level.¹ There is widespread interest in improving executive organization and management in the sphere of government. In many states, interest in governmental reorganization long antedates the recent Federal study. Other state inquiries are not being confined to the executive branch, and there is at least talk of constitutional revision in a number of states.² Perhaps the most significant feature of the new constitution of New Jersey is the reorganization of the state judicial system which it has brought about.³

The Connecticut Commission on State Government Organization was set up by statute to "study all functions of State Government."⁴ It did no less. The report of the group relates to all three branches and even proposes, in draft form, a revision of the state constitution.

While I am not qualified to discuss the Connecticut report in terms of the "practical" political climate of the state, it is in order to indicate at once that the document has received a wintry reception in the legislature. The special session, convened to consider the recommendations, adjourned after enacting only a few piecemeal measures relating to executive organization.⁵ On April 18, in a second special message on the subject, the Governor had receded from his original position of urging effectuation of the report *in toto* and offered

1. Reorganization studies have been undertaken in twenty states and two territories. Bane, *As the States Enter 1950*, 23 STATE GOVERNMENT 4, 7 (1949). They are Arizona, California, Connecticut, Delaware, Idaho, Illinois, Iowa, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New York, North Dakota, Ohio, Oregon, South Carolina, Tennessee, Wisconsin, Hawaii and Puerto Rico. See 22 STATE GOVERNMENT 229 (1949).

2. See Graves, *Constitutions in THE BOOK OF THE STATES 1950-51*, 81.

3. Harrison, *Judicial Reform in New Jersey*, 22 STATE GOVERNMENT 232 (1949).

4. Conn. Spec. Act 28 of 1949, § 3. While the Commission is frequently referred to herein in the past tense in view of the completion of its primary study, it is to be noted that its legal life continues until April 1, 1951.

5. In a post-mortem pamphlet issued in June, 1950 by the Democratic State Central Committee under the heading *The Set-Back for Good Government in Connecticut 1950*, there is a score sheet designed to show how the Democratic Senate went down the line for the Commission proposals only to have reorganization killed by the Republican House. The House "adjourned" on May 25, 1950, without the concurrence of the Senate. The latter stayed in session another day and completed action substantially in line with the Commission report.

a number of frank compromise proposals.⁶ The effort was ineffectual. Partisan lines had been drawn and hope of an accord vanished.

Quite apart from political considerations, it is a pleasure to record, at this point, independent judgment that the report is a splendid contribution to the cause of good government and ill deserves the treatment it has thus far received.

The organization and procedures of the Commission have been well described elsewhere by Mr. Ralph P. Sollott, Staff Director of the study.⁷ He states that the five prominent men who made up the commission were of such caliber as to induce bipartisan agreement. The chairman was Carter W. Atkins, Executive Director of the Connecticut Public Expenditure Council.⁸ The Commission early prepared a Program and Policy Statement to define its understanding of its mission and guide the technical staff thereafter assembled to do the spade work.

The 202 state agencies were allocated to 22 survey units. Each commissioner served as sub-committee chairman for four or five survey projects. Mr. Sollott states that even though less than seven months were available for the study, the use of three months in recruiting staff was a wise expenditure of time since each project director was required, before he was definitely employed, to submit an outline of his proposed assignment which would be helpful in determining what it would take to do the job.

The names of the project directors made up a distinguished list. One of this group, Dr. Harvey C. Mansfield, Chairman of the Political Science Department of The Ohio State University, served as editor-writer for the Commission in the actual composition of the final report. He succeeded in couching it in simple, direct language with a sound common-sense flavor.

The report is a brief affair; the main body of it occupies 81 pages. Ten "acts" to accomplish the program, together with brief explanations, take up 73 more. The survey unit reports were not published with the Commission report. An interesting feature of the intragovernmental and public relations efforts of the Commission was the piecemeal release of the ten chapters of the report proper and of the "acts" proposed to implement it. This was done in February 1950. The General Assembly convened in special session on March 9.

Financial Management

The Commission found that fiscal functions were widely scattered and responsibility diffused, lacking both the needed authority in the Governor and the machinery for centralized management. The Report therefore would do

6. CONN. PUB. DOC. No. 3.

7. *All the Functions of State Government*, 23 STATE GOVERNMENT 81 (1950).

8. The others were James L. Loomis, retired chairman of the board of the Connecticut Mutual Life Insurance Company; Oliver B. Ellsworth (a Connecticut name with which to conjure), President of the Riverside Trust Company and the Portland Trust Company; G. Keith Funston, President of Trinity College; and James G. Rogers, Jr., a prominent management consultant.

away with the elective offices of comptroller and treasurer and, in keeping with a strong body of current opinion,⁹ set up a single finance department headed by a director appointed by and serving at the discretion of the Governor. This one department would serve the entire state functions of revenue, treasury and control accounting. The Commission favored an annual budget prepared in the executive establishment on a "performance" basis, such as that recommended by the Hoover Commission, and urged that appropriations follow the budget form. It suggested that the item veto of the governor be extended to permit reduction as well as outright disapproval of an item.¹⁰ All of this was with a view to more intelligent review of budget requests, to more effective expenditure control and to better evaluation of performance. It tied in with a separate recommendation that the legislature meet annually instead of biennially.

The Commission made strong point of the difficulty of achieving centralized fiscal management so long as the state had over 100 special funds which tied up a third of state receipts "in arbitrary amounts for restricted purposes, regardless of relative need."¹¹ It recommended that all special funds be merged into the state general fund. This provoked spirited opposition by persons interested in particular funds and in his compromise message of April 18, 1950, the Governor suggested the continuance of five of the special funds.

Executive Reorganization

Perhaps the Commission recommendations on executive reorganization were the ones which called forth the strongest opposition. The Commission identified over 180 agencies in the executive branch. It favored a short ballot confined to the governor and lieutenant governor. It proposed the organization of all executive activities, apart from the office of governor, in fourteen operating departments, and three central service agencies concerned with (1) personnel, (2) public works, and (3) supplies, space and records, each with a single head appointed by the governor and to serve at his discretion.¹² It frowned upon the use of boards and commissions for administrative management but recommended departmental adjudication boards, with some independence from executive control, to perform adjudicative functions.¹³ The report stresses the value of citizen participation in giving advice to administra-

9. SHULTZ, *AMERICAN PUBLIC FINANCE* 118 (3rd ed. 1942).

10. The Commission's statement, on page 10, that the existing item veto is "too clumsy an instrument" bears striking resemblance to a comment by this reviewer about the Ohio provision. Fordham, *Some Aspects of Constitutional Revision in Ohio*, 23 *OHIO B.J.* 181, 185 (1950).

11. *REPORT*, at 13.

12. The *REPORT* (p. 31) suggests an exception as to the appointment and removal of the Education Commissioner.

13. The Commission proposed the adoption of an administrative procedure act governing rule-making and adjudicative procedure. *REPORT*, at 107, 108.

tive agencies through citizen advisory boards; the Commission proposed a citizens advisory council for each department.

While there was a tendency at first to be "fairminded" and reserve criticism, open opposition to this proposed centralization of authority and responsibility was to be expected and emphatically did come. The most obvious plaint was that the plan would make the governor a dictator. This charge in many minds came to be associated with Governor Chester Bowles, the Democratic incumbent. Many boards and commissions, moreover, had been dignified by the respect in which individual members were held. A decrease in elective offices is opposed to the particular interests of those in office and their followers as well as the professional politician who prefers to depend on his chances with the voters.

Actually the Commission was both relying upon the analogy to the office of the President in the Federal Government and following, in the main, the course of Connecticut's Cross Commission of 1937 and the respected and far-from-radical Hoover Commission. It is supported, moreover, by developments in local government; the city manager plan, with its centralization of executive management, has gained a great deal in popularity in recent years.¹⁴ The validity of any suggestion that diffusion of responsibility among a number of elected officers would be either more democratic or conduce more effectively to good management would be very difficult to demonstrate. This is the more clear under the Connecticut Commission proposals, for, in addition to the enlarged possibility of informed voting and to clear-cut accountability, the governor would be subject to recall.

Organization is not static. Thorough overhauling does not obviate the need of later changes. Thus, the Commission proposed that the Governor be empowered to promulgate reorganization plans, subject to legislative "veto," much as the President may do under the Reorganization Act of 1949.¹⁵

Personnel Management

Here the Commission adopted a positive philosophy which improved on the Hoover Commission attack at the federal level. It would expect a new central office of personnel services to (1) emphasize positive recruitment; (2) review thoroughly existing job classifications; (3) initiate and support employee training programs; (4) develop performance standards for common skills; (5) establish regular grievance procedures; and (6) foster better welfare services for employees.

The Legislative Branch

Connecticut's bicameral legislature is made up of a 36-member Senate, representation in which is supposed to be based on population, and a House

14. See current data in THE MUNICIPAL YEAR BOOK 1950 245 *et seq.*

15. Pub. L. No. 109, 81st Cong., 1st Sess. (June 20, 1949).

whose 272 members come from 169 towns. Each town has at least one representative; those of over 5,000 have two. Since the latest reapportionment was effected in 1903, the integrity of the population basis for the Senate has not been preserved. To an outsider the situation in the House bears a marked resemblance to the notorious rotten borough system in pre-1832 England and makes the rule of Ohio and a number of other states assuring each county at least one seat in the lower house look splendidly democratic by comparison.¹⁶

The Commission could not reach a consensus on apportionment of the legislature as a whole. It did propose to leave the Senate unchanged except for the suggestion that responsibility for decennial reapportionment be transferred from the General Assembly to a commission of three, who, unlike the legislative body, would be compellable by judicial process to perform their duties.¹⁷ The Commission members also agreed that the House was too large and proposed that the number be decreased by allowing but one representative from each town or city, as a step in the right direction. The effect of this, of course, would be to render inequality in representation even greater. This is a far cry from the proposal of the cognizant survey units that the legislature be unicameral and that the members be chosen from electoral districts based on population.¹⁸ A single policy body of modest size would appear ideal for a small compact political unit like Connecticut.

Other major changes proposed by the Commission were: (a) annual sessions without time limits, (b) a ban on multiple office-holding by legislators, (c) a material increase in legislative pay and allowances, and (d) a ban on "local or special legislation."¹⁹ Noteworthy also is that the draft constitution is so worded as to make it clear that the legislature could convene itself in special session and, thus, would not be completely subject to executive discretion in this respect.²⁰

Conspicuous in their absence are provisions—common to many states—for unitary subject matter in a statute, for statutory titles identifying legislative subjects and for setting out laws or sections of laws being amended at length.²¹

The Commission gave proper recognition to the legislature's need of technical assistance in research, drafting and housekeeping services. It proposed the establishment of an Office of Legislative Services to provide all these aids under the direction of a well-paid executive.

16. LEGISLATIVE APPORTIONMENT 16 (Bureau of Pub. Admin., Univ. of Calif., 1941).

17. Many will remember the stalwart but futile efforts of the late John B. Fergus to compel reapportionment action by the Illinois legislature. *Fergus v. Marks*, 321 Ill. 510, 152 N. E. 557 (1926).

18. Braden and Cahill, *A New Constitution for Connecticut,—Part I*, 24 CONN. BAR J. 121, 144 (1950).

19. In the draft constitution this appears in a separate article largely concerned with local government.

20. ARTICLE THIRD, § 5. See Braden and Cahill, *supra* note 18, at 150.

21. *E.g.*, OHIO CONST. ART. II § 16.

The Courts

The Commission beamed upon the State's two constitutional courts, the Supreme Court of Errors and the Superior Court. With respect, however, to the six types of lesser tribunals—the common pleas, probate, municipal, justice of the peace and juvenile courts and the Traffic Court of Danbury—it embraced the view that drastic reform was necessary. Documentation for the Commission findings and recommendations may be found in the able and forthright survey unit report on the courts prepared by Federal Circuit Judge Charles E. Clark, Project Director, with the assistance of his son, Professor Elias Clark.²²

It is not feasible to list here the many grounds for dissatisfaction with the inferior courts. It may simply be noted, by way of illustration, that the jurisdiction of the common pleas courts, units of a state-wide system, is partly exclusive, partly concurrent with that of the Superior Court and partly concurrent with that of the minor courts, without at the same time being clearly defined; that municipal, justice of the peace and probate courts are proliferated on a local basis without the dignity, freedom from political control and remuneration to attract competent judges and win public esteem; that the 120 probate judges, elected to serve in as many districts, are largely laymen and are compensated on a discredited fee basis, which results in annual pay varying from a pittance to a lush \$40,000; and that there is serious lack of coordination. The Commission adopted the recommendation of the Clark report that the solution of the problem lay in establishing a unified state judicial system, following the magnificent lead of New Jersey, where unification of the court system, as projected in the constitutional revision of 1947, has been achieved.²³ The following excerpt from the Clark report gives us the principal structural elements in the plan.

"Specifically there would be one judicial department under the administrative direction of the Chief Justice and such staff as may be necessary for control and allocation of personnel, fiscal and financial payments and accounting, and the collection of statistics of court business and operation (now so sadly lacking as to all the minor courts). The Division for the trial of cases of general jurisdiction would be limited to the Superior Court, which should absorb the present trial jurisdiction of the Court of Common Pleas. The Division for the trial of cases now heard by the municipal and justice courts would be that of either common pleas or district courts of sufficient territorial extent and judicial power to command the services and justify the salaries of competent judges. The Probate Division should follow a similar course, with, quite obviously, abandonment of the notorious fee system of support of the judges. Special

22. This report is presently available in mimeographed form only. For a condensed discussion of the proposed reforms in Connecticut, as a case study of generally desirable reforms, see the Clarks' article, p. 1395, *supra*.

23. See Harrison, *supra* note 3.

divisions, such as that for the Juvenile Court, could be incorporated into or added to the department as policy demands."²⁴

As projected by the Commission the revamped and unified judicial system would consist of five divisions: The Supreme Court of Errors, the Superior Court, the Common Pleas, the Family Court and Probate. There was a further important recommendation that by statute broad rule-making authority be granted or confirmed to the Supreme Court of Errors in order to achieve both improvement and uniformity in practice and procedure.

Effectuation of the proposals was to be left to the General Assembly save for probate court reform; the probate courts now have constitutional status. The existing pattern of appointment of Supreme and Superior court judges by the General Assembly, upon nomination by the Governor, would be extended to all state judges. What has aroused the critics is the proposal that the terms of office of the judges be left to statutory determination. As has already been well-stated, this does not destroy tenure; it rests responsibility upon the legislature.²⁵ It appears, moreover, that the Commission is willing to accede to judicial terms being fixed by the constitution.²⁶

Local Government

The Commission would abolish county government. To this end the draft constitution omits all reference to the office of sheriff. The town has always been the basic general-function unit of local government in Connecticut and the Commission makes a good case for putting an end to the ill-developed county governments and turning their functions over to state agencies.

There are no Connecticut constitutional limitations precluding local legislation relating to local government. The old system of special legislation governing towns and cities, long since proscribed in many states,²⁷ remains the order of the day. The Commission was on the very soundest ground in condemning this system in strong terms; the point is too clear to require elaboration.²⁸ To effectuate this conclusion the draft constitution forbids local and special legislation, except as otherwise provided, and the only exception as to local government has to do with legislative consent to interlocal arrangements. The need for the exception is not apparent to this reviewer. Provision can be made by general law for interlocal agreements, for boundary changes and for consolidation of local units. This is a commonplace in other states.²⁹

24. At p. 18.

25. Braden and Cahill, *supra* note 18, at 167, 168.

26. *Ibid.*

27. SUTHERLAND, STATUTORY CONSTRUCTION §§ 2101, 2111 (3rd ed. 1943).

28. Concerning the evils of special chartering in a sister state, which has since proscribed it, see Fordham, *The West Virginia Municipal Home Rule Proposal*, 33 W. VA. L.Q. 235 (1932).

29. As to functional consolidation, see, for example, MINN. STAT. ANN. § 471.59 (1945).

The "draft" ordains that general legislation "shall" provide reasonable classifications. This is broadly referable to general legislation but it was doubtless conceived in relation to legislation on local government. It may be questioned whether it adds anything; the prohibition would not preclude reasonable classification and surely it is not desired that this clause be interpreted to require that *every* general law provide classifications.

The Commission favored home rule for towns, boroughs and cities in the sense of authority to make and change their charters of government. The draft purports to confer this power directly but leaves it to the legislature to prescribe the manner of its exercise. The legislature is commanded to provide an optional charter system for units which do not exercise "their charter powers." Home rule would extend to all the "local and municipal affairs"³⁰ of a unit subject to legislative authority to exercise, by general law, reasonable control over municipal affairs to protect the interests of the state. This legislative power, it is solemnly declared, is not to be construed to deny local self-government.

Descriptively, it is to be observed that the proposal does not call for full-fledged constitutional home rule since enabling legislation must be passed to provide the procedure for the exercise of "charter powers" and the availability of substantive home rule powers depends upon the adjective process of charter-making.³¹

With respect to the policy of home rule it has long been the considered position of this reviewer (1) that the assumed distinction between local affairs and matters of state concern is, apart from the world of broad political ideas, fuzzy and incapable of reasonably satisfactory application and (2) that to give local units areas of authority beyond the control of the state government is out of harmony with well-grounded contemporary ideas about public administration, which stress purpose and function and the flexibility in organization and distribution of powers required to get the job done. Constitutional home rule overemphasizes relatively fixed geographical areas which, quite commonly, do not conform to actual service areas.

Local autonomy is a justly-cherished value. I suggest that the heart of it is local responsibility for the conduct of public business at the local level, including the raising of the bulk of the revenue required for the purpose. This can be preserved and strengthened under a system of general laws providing a liberal grant of substantive powers and great flexibility as to choice of governmental forms. It is significant that the New Jersey constitutional revision of 1947 definitely rejected home rule,³² that the revision sought to reverse conventional

30. ARTICLE EIGHTH, § 2.

31. Ohio is among a minority of home rule states in which substantive home rule powers are granted directly by the constitution and do not depend on charter-making. *Village of Perrysburg v. Ridgeway*, 108 Ohio St. 245, 140 N.E. 593 (1923).

32. See ARTICLE FOURTH, § 7, Pars. 9, 10. There is no positive provision for and, thus, no home rule.

strict constructionist treatment of municipal powers³³ and that the legislature has recently adopted a liberal optional charter law.³⁴ A system like this should work well in a political and judicial climate favorable to local government, and, at the same time, preserve legislative freedom of action in an era of exceedingly rapid social change. Without such an atmosphere not even the broadest formal grant of home rule will avail.

Why, in any event, grant charter powers to every town, borough and city, however small? In Ohio there are some 800 villages (municipalities of less than 5,000 population). Of these not more than a half-dozen have adopted home rule charters. The crux of the home rule problem is and always has been the larger centers.³⁵

Popular Legislation

The draft constitution contains provisions for the initiative and the optional³⁶ referendum, which are designed to be self-executing. The initiative would apply to any subject of legislation but approval by two-thirds rather than a simple majority of the electors voting would be required with respect to an initiated appropriation or tax measure or one "dealing with matters not common to the State as a whole."³⁷ There would be an outright exception under the referendum in favor of emergency measures passed by a two-thirds majority "of the General Assembly" but no other—not even current appropriation measures.

The draftmen have properly made the point that a self-executing provision of a constitution should be characterized by tight legalistic drafting.³⁸ There is reason to doubt, however, that they achieved it in this article of the draft. (1) The legislature may enact an initiated measure or it may reject it and, in the latter event, may propose a different measure on the same subject. Does this mean that the legislature could not formally amend even to correct a blatant error but would have to propose the correction in a complete new measure? (As a matter of policy would it not be better, in any event, to permit legislative adoption of an initiated measure in amended form, subject to further petition for referendum?) (2) The referendum would apply to any "part of any measure."³⁹ Does this mean a sentence or a clause or a word as distinguished from a section or separately identified subdivision of a section? (As a matter of substance, how can we justify referendum, even as to sections, any more than we could executive veto of separate sections of non-appropriation

33. ARTICLE FOURTH, § 7, Par. 11.

34. This measure was enacted only this year and the correct reference to the session laws is not available to the writer.

35. See Lynagh, *Wisconsin "Unshackles" her Cities*, 18 NAT. MUN. REV. 737 (1929).

36. Voluntary submission by the legislature is the "voluntary" referendum; that at the instance of petitioners, the "optional" referendum. ROBERT LUCE, *LEGISLATIVE PRINCIPLES* 599 (1930).

37. ARTICLE SEVENTH, § 4.

38. Braden and Cahill, *supra* note 18, at 124.

39. ARTICLE SEVENTH, § 3.

measures?⁴⁰ Since the filing of a petition against a part would not prevent the remainder of a measure from becoming effective, bizarre consequences might well be produced.⁴¹ (3) The scheme of Section 2 of this article is that an initiated measure must first go to the legislature to give it a chance to enact it or propose a different measure, yet Section 4 lays it down that an initiated or referendum measure shall become law if approved by a majority of the votes cast thereon "and not otherwise." (The draft does not adequately protect legislative opportunity to consider an initiated measure. It permits presentation to the General Assembly late in a session.) (4) When it comes to emergency measures no attempt is made to tell us whether the fact of emergency is justiciable. This is a familiar question which could be laid to rest by the draftsmen. (5) There is the further question whether the legislature could repeal or modify a law approved by the voters. If it could and if the legislative determination of emergency were final, legislative repeal of an initiated measure could be made to "stick." (6) Is "two-thirds majority of the General Assembly" referable to two-thirds of each house? (7) Initiative and referendum petitions are submitted to the governor. The article does not attempt to clarify the function of the governor in this connection. There may be a question as to the extent of his authority in passing upon the sufficiency of petitions or, in other words, as to the extent of judicial review of his action in this respect. (8) Does "common to the state as a whole" refer to commonality of interest in the subject matter or uniformity of application?⁴²

The real point of these comments, in the larger view, is that the drafting of a constitution, particularly if it is to contain self-executing provisions, is no mean assignment. The draftsmen, in this instance, were no doubt handicapped with respect both to available time and to interplay of ideas. I wish it clearly understood, moreover, that this critical treatment of one article is not an attack

40. Concerning Ohio's ill-conceived, but happily shortlived, section veto see Tuttle, *History of the Executive Veto in the Ohio Constitution*, 2 OHIO ST. L.J. 99, 107 (1936).

41. Thus, a petition might be addressed to the levy clause of a tax measure. This would permit administrative and other provisions to go into effect at once, although the levy clause is obviously not separable.

It is to be further noted that Section 4 provides that "any measure" subjected to referendum shall become law only if approved by a majority of the votes cast thereon. Is this consistent with the idea that the remainder of a measure may take effect where the referendum is invoked as to a part?

42. Perhaps the following questions could be resolved by legislation enacted under Section 9 to facilitate the operation of the article. (1) How does one determine the "ten per cent of the electors" required as signatories of an initiative petition? (2) May petitions be presented in separate parts? (This is a matter of some practical importance). (3) How are petitions to be verified? The recall section expressly requires the governor to verify, but verification is not mentioned under the head of initiative and referendum.

The draftsmen have with laudable candor acknowledged a discrepancy which occurred in relating the veto clause to the referendum provisions and have indicated how to remove it. Braden and Cahill, *supra* note 18, at 161-163.

on their draft as a whole. It is directed simply and solely at one self-executing part of the instrument, a part exceedingly difficult to prepare.

Only one comment with respect to the larger considerations of policy affecting a system of popular legislation will be offered here. It can be put in the form of a question: Is popular legislation consistent with the short ballot?

Conclusion

In a final word, my estimate of the report of the Commission is that its work on the executive branch and upon the courts is particularly outstanding, that most of its recommendations as to the legislature are very constructive but that some of its major proposals as to local government and popular legislation merit further study. Let those who are concerned with good government close to home, particularly in relation to the problem of maintaining a satisfactory Federal-State balance in our scheme of things, ponder well the implications of rejecting such an opportunity as now exists in Connecticut to improve and strengthen state and local government.

JEFFERSON B. FORDHAM†

CASES, MATERIALS AND PROBLEMS ON LAW AND ACCOUNTING. By Donald Schapiro and Ralph Wienshienk. University Casebook Series. Brooklyn: The Foundation Press, Inc. 1949. Pp. xxi, 935. \$8.00.

MATERIALS ON ACCOUNTING. By Robert Amory, Jr. University Casebook Series. Brooklyn: The Foundation Press, Inc. 1949. Pp. xxiii, 781. \$7.00.

It is no longer necessary to point out the vital need of a knowledge of accounting to the practicing lawyer, and the consequent importance of accounting instruction in law school. But except for the pioneer work of Graham and Katz,¹ there has been little textbook exposition designed primarily for lawyers, and never heretofore a "casebook" or selection of judicial and administrative decisions and administrative and professional pronouncements and other materials on the field of accounting as related to the law.

Both of these casebooks are splendid. Even for a reviewer who had an "advanced" course in corporate accounting before entering law school, they evoke feelings of regret that he had not had the benefit of such concrete introductions to the business and legal significance of accounting before he took his business law courses. And a reviewer who has struggled to impart to younger lawyers the "expertise" in legal-accounting questions which they were supposed to have as part of the staff of a federal administrative agency daily concerned with problems of corporate disclosure, fairness, and feasibility can only think of the hours that the trainees' law school study of either of these books would have saved him and them.

† Dean of the College of Law, Ohio State University.

1. GRAHAM AND KATZ, *ACCOUNTING IN LAW PRACTICE* (1st ed. 1932; 2d ed. 1938); KATZ, *INTRODUCTION TO ACCOUNTING FOR STUDENTS OF LAW* (3d ed. 1948).

To venture into detailed comparison of the books, and particularly into a judgment on their relative suitability for classroom use, would be a dangerous undertaking for one with no law teaching experience, particularly when a major problem in the formulation of a course on law and accounting must be the integration of the course with the business law and tax courses of the curriculum. If I were otherwise more daring, the spectacle of two law teachers and editors experienced in this field hurling pithy adjectives at each others' productions² would give me pause. Suffice it to say that both prefaces admit that there is more in the related book than can be taught in a relatively short course, and that to this reviewer it comes as a pleasant surprise to learn that even a substantial portion of either of these collections can be taught in a short course to students starting with no knowledge of accounting. My first reaction was that the caliber of law teaching or the caliber of law students must have shown remarkable improvement in the less than twenty years since I walked a university campus. But further study shows that in each book the extremely compact summary of the technique of double entry bookkeeping with which the book begins—probably beyond the ability of students to retain if standing alone—is reviewed and expanded and drilled, through extraordinarily able editing jobs, in annotations, questions and problems.

The core of the materials in both books is the same (as might be expected), and both contain so much material that they permit any teacher to throw the emphasis of his course in any way he chooses. Yet the books seem to reveal differences in the editors' conceptions of the subject-matter, and these differences, while they should not be over-emphasized, are worthy of comment.

Schapiro and Wienshienk title their book to show that it includes materials on *law and accounting*, and in their preface they state their purpose to emphasize "accounting as a tool in the lawyer's kit." On the other hand, while Amory's subtitle shows that the book is designed for law students, he titles his book to emphasize materials on *accounting* alone. He disclaims an intention to treat "legal accounting", and announces his purpose "to provide a solid theoretical grounding in accounting as a universal language without which our industrial society could not exist."

Consistently with their approach, Schapiro and Wienshienk organize their material by legal topics: contractual litigation, the corporate enterprise, public utility regulation, trusts and estates. Consistently with his contrasting approach, Amory organizes his materials squarely on the concept of accounting defined as a process of matching costs against revenues. Having in mind that the function of the course is to teach accounting, not merely another field of law, and having in mind also that the bulk of the

2. See Amory, Book Review of KATZ, *INTRODUCTION TO ACCOUNTING FOR STUDENTS OF LAW* (3d ed. 1948), 2 J. LEGAL EDUC. 112 (1949); and Katz, Book Review of the two casebooks herein under review, in 63 HARV. L. REV. 1282 (1950).

books must serve to expand and drill the compressed explanation of accounting techniques in the introductory chapters, the Amory structure seems to me to be the more logical, and his organization of the non-legal materials more satisfactory.

In accordance with their basic conception, Schapiro and Wienshienk use a substantially greater quantity of judicial case material than does Amory, and both books, in my opinion, use too much. Amory himself recognizes that the courts are fifty years behind the profession of accountancy,³ and that most judicial decisions on accounting questions are "a chamber of horrors".⁴ Then why use so many of them? Amory has the objective of giving the student "an acquaintance with the more frequent errors untrained courts fall into when confronted with poorly presented accounting questions."⁵ Possibly it is useful to give the student a sense of thankfulness that he will never sound as stupid as the courts on an accounting question, but this could be done without so many examples. The substantive accounting issues that have been presented to the courts, with relatively few exceptions, have been non-recurring, and not illustrative of broad problems. The resulting decisions, in my opinion, are usually not worth reading or teaching, except for a few samples as a prelude to the question, "Could this litigation have been avoided by proper drafting?" That question, unfortunately, is not sufficiently asked in the notes and problems in either book.

Hand in hand with knowledge of accounting as a lawyer's tool goes a facility with figures. The law student "whom the very prospect of working with figures brings to the verge of panic"⁶ will not go far as a financial lawyer, unless real work with financial statements persuades him to take a plunge into the sea of arithmetic. The lawyer working with financial materials cannot safely be passive when confronted with accountants' figures. He must learn how they were derived; otherwise, he runs the risk of finding that he has been working with the end product of erroneous and sometimes preposterous assumptions. Schapiro and Wienshienk invite the plunge here, as part of the course. Their footnotes and problems ingeniously challenge the student to find how the figures were put together. In fact, their collection of recapitalization cases goes far beyond anything which could narrowly be classified as accounting, to the point where they are teaching the arithmetic and law of fairness.

I have some doubt that so brief a course covering so wide a field is really the place to try to teach figure thinking, valuable as it is. I have the same reaction to Amory's emphasis on such figure techniques as ratio analysis and trend analysis. Not that the materials are not valuable for the student to have at hand. But in a contest of values, I believe that the limited time

3. Amory, at p. 303.

4. Amory, Book Review, 2 J. LEGAL EDUC. 112, 116 (1949).

5. Amory, Book Review, 2 J. LEGAL EDUC. 112, 113-14 (1949).

6. Katz, Book Review, 63 HARV. L. REV. 1282 (1950).

available could better be devoted to other matters—for instance, to the utterly fascinating collection of actual corporate reports with which Amory has concretely illustrated the significance of accounting problems. Nowhere have I seen a body of materials to compare with this collection of reports in making accounting issues appear as matters of importance affecting management and finance, in contrast with the feeling of abstractness which is the curse of accounting textbooks.

Having reached an understanding of the techniques and the importance of accounting, the law student should still face some important questions: "What more is accounting than a technique of double entry? What are accounting principles? What are accounting facts?" Amory, while recognizing in his preface that accounting is "utilitarian art", accepts too readily the thesis that it is "a universal language without which our industrial society could not exist." At least in his written material, he does not challenge the student to inquire whether another language, with perhaps different definitions and a different structure, might have been even more useful. Schapiro and Wienshienk, having chosen to emphasize the relationship *between* the different disciplines of law and accounting, are in a better position to keep before the student the semantics of accounting. They do so, probably as adequately as possible in an elementary course, with such materials as the delightful contrasting quotations which begin their treatments of corporate distributions⁷ and public utility regulation;⁸ the direct study of the use of accounting terminology in dividend statutes;⁹ a sophisticated treatment of the regulatory and accounting issues in the public utility "original cost" controversy,¹⁰ and a more complete quotation than Amory uses of Mr. Justice Jackson's thought-provoking comments in the *Hope Natural Gas* case.¹¹

But all this is only a beginning. Accounting as a language of business badly needs a thorough-going semantic treatment, and that treatment is

7. Pp. 235-36.

8. P. 466.

9. P. 238 *et seq.*

10. P. 487 *et seq.*

11. "To make a fetish of mere accounting is to shield from examination the deeper causes, forces, movements, and conditions which should govern rates. Even as a recording of current transactions, bookkeeping is hardly an exact science. As a representation of the conditions and trend of a business, it uses symbols of certainty to express values that actually are in constant flux. It may be said that in commercial or investment banking or any business extending credit success depends on knowing what not to believe in accounting." Mr. Justice Jackson, dissenting in *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 643 n. 40 (1944). The dissent continues with approving references to Hamilton, *Cost as a Standard of Price*, 4 LAW & CONTEMP. PROB. 321 (1937), the use of which, without adequate preparation and counterbalance, in an accounting casebook for law students Amory has vigorously disapproved. Amory, Book Review, 2 J. LEGAL EDUC. 112, 115 (1949).

more likely to come from persons with the perspective of an allied profession than from the accountants themselves. The law school is the ideal place to germinate the thinking. For example:

Is accounting "income" the same income as economists have in mind when they say that value is the capitalized expectancy of future income?

What is the remaining utility of balance-sheet ratios in investment analysis and credit analysis, now that the balance sheet is clearly recognized not as a representation of going-concern or liquidation value but as a summary of unexpired costs?

How sound are accounting principles as to the capital and surplus account and their effect on the propriety of dividends, when the regulatory agencies most zealous in their application are ready to depart from them in the interest of "regulatory expediency"?¹² Is not this regulatory expediency a common-sense examination of the business facts without submission to the distortion coming from the structure of what Amory calls the "universal language . . . [of] our industrial society"?¹³

How fundamental, and how worthy of blind acceptance, are accounting principles which lawyers can invoke or evade by alternative legal techniques? How great, and how healthy, is the impact of accounting classification on the development of legal form? Are the growing sale-and-lease-back of real estate, and the less well-known chattel lease, useful economic devices with substantial differences from mortgages, or are they just means of kidding the literal-minded accountants into omitting the liabilities from the balance sheet?¹⁴ Is there a difference in fact between a sale of a department store's receivables with recourse and a borrowing against them, or is the significant difference the fact that the accountant will classify one legal form as a contingent liability and the other as a balance sheet liability? How meaningful are the regulatory accounting distinctions between "original cost", "cost to the accounting utility", and "write-up" when the accounting

12. See *Northwestern Electric Co. v. Federal Power Commission*, 321 U.S. 119 (1944) and comment on the various stages of the case in Dohr, *Public Utility Accounting*, 74 J. ACCOUNTANCY 477 (1942); Horne, *Accounting Principles and Utility Regulation*, 75 J. ACCOUNTANCY 261 (1943); May, *Accounting Principles and Regulatory Expediency*, 71 J. ACCOUNTANCY 116, 117 (1941); May, *Northwestern Electric Co.*, 75 J. ACCOUNTANCY 451 (1943); Colbert, *Accounting Principles and Utility Regulation*, 75 J. ACCOUNTANCY 360 (1943); Kripke, *A Case Study in the Relationship of Law and Accounting: Uniform Accounts 100.5 and 107*, 57 HARV. L. REV. 433, 693 at 701 *et seq.* and 720 (1944).

13. Cf. KORZYBSKI, *SCIENCE AND SANITY* pp. ii, vi (1933): "[I]n the structure of our languages . . . we preserve delusional, psychopathological factors. These are in no way inevitable. . . . Few of us realize the unbelievable traps, some of them of a psychopathological character, which the structure of our ordinary language sets before us."

14. Cary, *Corporate Financing Through the Sale and Lease-Back of Property: Business, Tax, and Policy Considerations*, 62 HARV. L. REV. 1 (1948). The accountants have recently become more sophisticated on this point. AMERICAN INSTITUTE OF ACCOUNTANTS, COMMITTEE ON ACCOUNTING PROCEDURE, ACCOUNTING RESEARCH BULLETIN No. 38, (1949).

classification can be controlled by the legal techniques through which properties are transferred?¹⁵

What is the proper scope of accounting principles? Should accountants be allowed to tell a court as a matter of expert knowledge whether the cost of funding past service pensions is a current cost of doing business, or does the management which has negotiated with the union know the answer better?¹⁶ What good is accounting as a universal language of industry if its principles control only the symbols which represent an event on the corporate books, but are not the symbols by which the event is to be classified for more important purposes like rates and dividends?¹⁷ Are the courts wholly wrong in creating a dichotomy between "accounting merely"¹⁸ and the real problems of our industrial society, or is the "universal language" of the society inadequate to symbolize its problems? Can the inadequacy, if it exists, be corrected, or is accounting now as efficient a tool as it can be made?

Accountancy, a profession still in its infancy, has only just begun to be able to articulate its assumptions. In scarcely twenty years, it has turned from balance sheet emphasis to income emphasis, from the concept of assets as list of "property" to the concept of assets as unexpired costs. What had been deemed conservative because it understated assets is now deemed the opposite because it inflates future income. A whole revolution has occurred in thinking about charges otherwise than through the income account. Other equally drastic changes in accounting thought may yet occur. Books like those under review will produce a generation of lawyers sophisticated in accounting questions who may be able to help the accountants in further refinement of their techniques to provide answers to questions like those above. The cross-fertilization of the professions may ultimately produce an accounting language far more useful than that of the present to supply the many demands for facts in our industrial society.

HOMER KRIPKE†

15. See Kripke, *supra* note 12, at 693 *et seq.*

16. *New England Tel. & Tel. Co. v. United States*, 53 F. Supp. 400 (D. Mass. 1943). The official position of the accountants changed after the court accepted the testimony of the accounting experts in this case. AMERICAN INSTITUTE OF ACCOUNTANTS, COMMITTEE ON ACCOUNTING PROCEDURE, ACCOUNTING RESEARCH BULLETIN No. 36 (1948).

17. See *Norfolk & Western Railway Company v. United States*, 287 U.S. 134 (1932); *State Corporation Commission of Kansas v. Wichita Gas Company*, 290 U.S. 561 (1934); *Am. Tel. and Tel. Co. v. United States*, 299 U.S. 232 (1936); *Northwestern Electric Co. v. Federal Power Commission*, 321 U.S. 119 (1944); *New England Tel. & Tel. Co. v. United States*, 53 F. Supp. 400 (D. Mass. 1943). Cf. *United States v. New York Telephone Co.*, 326 U.S. 638 (1946). See Kripke, *Accountants' Financial Statements and Fact-Finding in the Law of Corporate Regulation*, 50 YALE L.J. 1180, 1197 *et seq.* (1941).

18. *Mr. Justice Roberts in Norfolk & Western Ry. Co. v. United States*, 287 U.S. 134, 141 (1932).

† Member New York Bar.

CASES ON FEDERAL COURTS, SECOND EDITION. By Charles T. McCormick and James H. Chadbourn. Brooklyn: The Foundation Press, Inc., 1950. Pp. xxix, 921. \$8.

THE second edition improves upon the first. And the first edition was a fine and stimulating casebook.

In the preface to the first edition of 1946 the authors asked: "how soon will the profession and Congress lay the ground work for a new Code of Federal Jurisdiction which can do as much for simplifying and rationalizing the Federal practice as the new Rules have done?" With the Judicial Code of 1948 effecting a partial answer to their question, a revision of the first edition was in order. Quite naturally it also reflects the case development of the four-year interim,¹ and the cases of this period are unusually provocative. Some of these, with familiar names, are: *Angel v. Bullington*, a federal court in a diversity case enforces only such rights as are enforceable in the state court;² *United States v. United Mine Workers of America*, a restraining order of a federal district court, that is personally served on the defendant, is not subject to collateral attack;³ *Ex parte Collett*⁴ and *United States v. National City Lines*,⁵ the clear provisions of the Code for transfer of "any" civil action to a more convenient forum plainly apply even to actions involving special interests; and *United Public Workers v. Mitchell*,⁶ *Bell v. Hood*,⁷ and *National Mut. Ins. Co. of the District of Columbia v. Tidewater Transfer Co.*,⁸ the concept of "case or controversy", general federal question, and diversity jurisdiction are, respectively, treated. Incidentally, in presenting the last case the

1. The new edition drops 70 cases and adds 47. This reduction in number is partially accounted for by the repeal of the assignee clause by the Judicial Code of 1948. While the number of cases has diminished the book has grown in size from 878 to 921 pages. Although all of the added cases were not, of course, the product of the interim between the first and second edition, the added cases are generally of recent vintage and, as subsequently stated in the text, are extremely interesting.

2. 330 U.S. 183 (1947). The capsule statement of the text summarizes only the aspect of the case immediately related to *Erie*. The more controversial aspect can be used either as a springboard for a plunge into the waters of res judicata or as material supplementing Chapter 6 entitled Jurisdiction to Determine Jurisdiction.

3. 330 U.S. 258 (1947). While the "John L. Lewis" case came as a surprise to some, its theory had long been established: a court order is usually something more than an idle piece of paper; when the court has proper jurisdiction over the parties the piece of paper may represent error but it is not a nullity.

4. 337 U.S. 55 (1949) (action under the Federal Employers' Liability Act).

5. 337 U.S. 78 (1949) (antitrust action by the United States).

6. 330 U.S. 75 (1947).

7. 327 U.S. 678 (1946).

8. 337 U.S. 582 (1949) (the 1940 statute treating a citizen of the District of Columbia as a citizen of a "state" for diversity purposes is valid).

While this case appears in Chapter 3 dealing with diversity, I prefer to take it up in connection with the materials in Chapter 1 because it poses so many fundamental questions concerning "constitutional" and "legislative" courts and the scope and limitations of Article III of the Constitution upon judicial power.

authors have done a fine job in editing down the opinions, from sixty-five pages in the official report to twenty-one in the casebook, and yet retaining the points of view and theories of the four separate opinions.

In the matter of cases this reviewer was disappointed to find that the second edition omitted Chief Justice Marshall's opinion in *American Insurance Co. v. Canter*⁹ dealing with territorial and constitutional courts. And the same comment is applicable to the much less known case, *Marshall v. Descart Properties Co.*,¹⁰ which presents in craftsmanlike manner the distinction between a bill to remove a cloud on title and a bill to quiet title in reference to the presentation of a general federal question. *King v. Order of United Commercial Travelers*¹¹ might well have been elevated from footnote to text and *Fidelity Union Trust Company v. Field*¹² demoted to footnote. Both cases deal with the controlling effect of a state nisi prius decision in a federal court under *Erie*; the *King* case is later, and discusses and qualifies the *Field* decision. A line or two of text could have told the tale of *Dimick v. Schiedt*¹³ and *Baltimore & Carolina Line v. Redman*¹⁴ to the effect that, unlike remittitur, additur is unconstitutional, and that the reservation of decision upon a motion for judgment notwithstanding the verdict could be made at common law and was the basis for Rule 50(b). With these cases thus disposed of, *Montgomery Ward & Co. v. Duncan*,¹⁵ which appears in a footnote to the *Redman* case, could have been moved up into the text to illustrate the present functioning of a motion for judgment n.o.v. or in the alternative for a new trial. If a choice had to be made between *Sibbach v. Wilson & Co.*,¹⁶ upholding the validity of Rule 35 on physical and mental examination, and *Hickman v. Taylor*,¹⁷ dealing with the controversial problem as to how far one party may delve into the files and trial preparation of his adversary, the latter case should have been chosen. And *Flournoy v. Wiener*¹⁸ should have found its way into Chapter 10 as a most illustrative case of how technical the mechanics of Supreme Court appellate procedure can become. The case will amaze small fry acquainted only with professorial "science and policy".

But these are all minor objections, and reflect in large part only the idiosyncrasies of this reviewer. A more fundamental matter involves praise rather than criticism. The authors have, quite naturally, given us a casebook for a specialized course designed to supplement supposedly basic procedural courses. The tables should be turned. Federal jurisdiction and

9. 1 Pet. 511 (U.S. 1828).

10. 103 F.2d 551 (9th Cir. 1939), *cert. denied*, 308 U.S. 563 (1939).

11. 333 U.S. 153 (1948).

12. 311 U.S. 169 (1940).

13. 293 U.S. 474 (1935).

14. 295 U.S. 654 (1935).

15. 311 U.S. 243 (1940).

16. 312 U.S. 1 (1941).

17. 329 U.S. 495 (1947).

18. 321 U.S. 253 (1944).

practice should be the basic procedural course in the law schools. Other procedural courses, if necessary at all to nod provincially at such states as Connecticut, New York, Pennsylvania and Texas, would be fillers. Such suggestions, however, have an appalling effect upon curriculum committees. For there is nothing like membership on a curriculum committee to make a black reactionary out of an otherwise normal and forward looking person. The sadism of Lord Coke and his forms of action, the cant of the equity pleader, the hodge-podge of code pleading, and the reverence for by-gone procedures cast a spell. And from the spell, curriculum committees emerge with today's masquerades that are known as the basic procedural courses.

This reviewer would like to see the McCormick and Chadbourn expanded into a two-volume casebook. And to see the expansion deal primarily with federal practice. The casebook would catch on in time. Some day it would even be conservative enough for the Yale Law School curriculum committee. Until then the authors have done a fine service for those of us who teach the specialized course of federal jurisdiction and practice, for McCormick and Chadbourn have, indeed, given us an excellent casebook.

JAMES WM. MOORE†

CASES AND MATERIALS ON LEGAL METHOD. CASES AND MATERIALS ON LEGAL SYSTEM. By William T. Fryer and Carville D. Benson. St. Paul: West Publishing Company, 1949. Legal Method, Pp. xxxvii, 899 pages. Legal System, Pp. xxix, 535 pages.*

THESE two volumes are the newest and largest of the materials for the introduction to law course. Professors Fryer and Benson have built upon a background of a quarter of a century preparing, teaching, and experimenting with introductory courses. Among the pioneers in the field, the weight of their influence has contributed to the steady adoption by most of the American law schools of beginning legal orientation courses.

Perhaps none realize as fully as the authors the nature of the market for which they write. It is a market which could be described as chaotic were it not for the presence of an underlying purpose seemingly motivating teachers of the introductory courses: the purpose being to assist the student in laying the foundation for adjustment of his mental processes to the law, to broaden his horizon of the scope of his subject, and to deepen his perspective. However, teachers disagree, and their schools disagree, on the nature of the introductory course which should be given. For example, the following are selected titles of courses of this type offered by American law

† Professor of Law, Yale Law School.

* There is now available a one volume edition of these two volumes. The new edition is some five hundred pages shorter than the original.

schools: civil procedure, remedies, legal actions, legal method, legal bibliography, legal research, legal history, survey lectures, legal ethics, legal institutions, legal philosophy, others, and *nothing at all*. Even where the titles and the materials are the same, the course content may vary.¹ This list illustrates the character of the problem of writing a satisfactory work to appease many demands. The evolution of courses of this type shows the gradual emergence of a demand on the part of law schools for them.² And the fact that as yet there are no universally accepted methods or materials or catalog descriptions is an indication, to me, of a healthy ferment in the field. Compare the 1434 pages of these two volumes with the 377 pages of the authors' efforts in 1935³—much of the increase in size and scope results from an acceptance of the place of the introductory course in the curriculum and from the cross fertilization of ideas concerning this course during the past fifteen years.

In *Legal Method* the authors seek to lay the foundation for case evaluation, the development of skills in legal thought within a context of substance and procedure, the acquisition of a sense of policy formulation beneath the cases, and the gaining of perspective concerning lawyers' materials and legal research. The content of the volume is: 139 pages—legal education and concepts; 124 pages—mechanics of case study; 308 pages—procedure or remedies; 194 pages—legal language, reasoning and stability in the law; 134 pages—legal bibliography and writing.

In comparison with *Legal Method*, the volume on *Legal System* has a narrower goal which I detect as seeking to illustrate the development and continuity of basic institutions of the American legal system (with their roots in the English legal system), to assist the student in acquiring a sense of professional responsibility, and to help them overcome a feeling of "verbal reticence," as the authors describe it, concerning the origin, operation and functions of the legal system. The first 147 pages are devoted to the English legal system: 59 pages—courts; 60 pages—procedure; 12 pages—legal profession; and 16 pages—law books. The remaining 387 pages relate to the American legal system: 54 pages—origin and growth of American law; 60 pages—developments in courts and tribunals; 98 pages—legal profession; and 175 pages—restraints on bench and bar.

The spirit of *Legal Method* is one of scope, depth, intensity, diversification, and cleverly successful editorial workmanship. The student begins his

1. "But similarity of name, and even use of the same student book, does not always vouch for identity of objectives and course content." REPORT OF CURRICULUM COMMITTEE, HANDBOOK OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS 154 (1948).

2. For evolution of the introductory course see HANDBOOK OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS 142 (1928); *id.* at 134 (1929); *id.* at 131 (1930); *id.* at 148 (1933); *id.* at 173 (1935); *id.* at 276 (1936); *id.* at 125, 154 (1948).

3. FRYER & BENSON, READINGS ON THE STUDY OF LAW AND THE ANGLO-AMERICAN LEGAL SYSTEM (1935).

study of law by reading about the objectives of legal education.⁴ I wish that I had begun my studies with the perspective of such materials before me; perhaps I would have been more aware of what my teachers were trying to do, and so have felt a closer association with them. I think, however, that teaching the objectives of legal education will fall on dumb ears unless the teacher is prepared to do some gymnastics during the first hour or two of the class, and perhaps exercise self control in holding down his own pet ideas in order to give a rounded view of the various attitudes. I have tried this experiment—it helped me as well as the students. A logical next step is to illustrate how legal concepts function, and to show the elusive quest of the courts for a legal “rule” followed through several cases and culminating with the idea of legal growth and adaptation, or rule change, to meet needs. These are social needs as mirrored through judges and by cases. This the student must learn at an early date. Here he sees a great legal writer say that law is disappearing. This legal writer is challenged by another who says it is not disappearing.⁵ Seeing the giants clash removes absoluteness and engenders scepticism in the young minds at an early date in their legal careers.

While the mechanics of study cannot be taught to perfection, it seems better to teach study methods than to leave freshman indoctrination to exaggerated dissimilarities of individual teachers’ techniques; students will soon learn about teacher differences and will benefit therefrom, but they should have a standard from which to judge. I have often felt that we miss opportunities of converting “C” students into “B” students by failing to assist them in study orientation.

Having established the foundation of objectives, concept fluidity, and mechanics of study, the step into the bulkiest portion of the book is designed to make the study of cases more understandable by illustrating the procedural skeleton holding the cases together. The effort here is not to teach a basic course in procedure but to illustrate the various steps of proceedings before, at and after trial, and to contrast state and federal procedure both on the trial and on the appellate levels. This is done by extensive use of records and briefs much of which, as the authors suggest, may be assigned as reading. When the student finishes with these materials he should have a rather broad perception of the procedural processes, minus, of course, those details and mechanics which must be learned in advanced procedure courses.

I was impressed with the idea of Chapter 8, “Language in Law,” but not particularly with the contents. There is a paucity of the materials on semantics that I expected to find. However, some references to non-legal sources are given which a teacher might use to explore the subject further. Many

4. Excellent articles showing diverse approaches of Douglas, Cardozo, Pound, Katz, Lasswell and McDougal, and Fuller.

5. At p. 123 is printed Pound, *Disappearance of the Law*; at p. 130, Clark, *Is Law Disappearing?*

examples could be drawn from first year courses to illustrate hazy thought due to improper communication. Analytical Jurisprudence, via Hohfeld, cannot be understood in twenty pages, but perhaps a few hours could be devoted to this while the students are reading the last two chapters on legal bibliography, research and writing.⁶ In teaching Hohfeld it has been my experience that it is the idea of orderly analysis which is important for the student to see and be aware of as he reads his cases. I do not particularly care if he cannot come up with a "no-right" at the proper moment so long as he acquires the habit of disciplined analysis.

The authors have conducted what may be a successful experiment in teaching "Reasoning in Law" by means of articles, interesting cases (on dogs, goats, cows, elephants and overlapping code provisions) woven around large portions of Professor Levi's stimulating "Introduction to Legal Reasoning." Here is also emphasized the problem of interest weighing and balancing, and value formulation. Can freshmen grasp this? If they cannot then they cannot grasp law. This should be the most difficult but the most rewarding portion of the book.⁷

As compared with *Legal Method*, *Legal System* is much less complex. Great portions of it might be assigned for reading without class discussion, or the teacher might lecture on related topics with the students utilizing the materials as background. Unlike the companion volume, in *Legal System* there is not the immediacy of contact with ideas, nor is there the opportunity for the student to utilize his new ideas in case courses. While time and change perspective in the development of English procedure and courts should be apparent to the student, he will have only fleeting glances of the dynamic social, political, and economic forces beneath the process of change. Yet, in property, forms of action, equity, and other courses the details should be filled in. The English bibliographic materials might have been presented in *Legal Method* without injury and with benefit.

The materials on the American legal system contain articles descriptive of the adaptation of English law to this country, the development and reform of our law, uniform state laws, and the emergence and function of administrative determinations. The work of judicial councils, law revision, restating and judicial conferences appear within a context of state and federal governments. The job of the teacher who covers these materials

6. Chapter eleven takes the facts of a previously studied conversion case and contract for service case and illustrates the law on the subject by quoting typical statutes, codes, cases, restatements, law reviews, treatises and other materials in full. The authors realize that the teacher may prepare legal bibliographic problems as supplementary materials. The results of the authors' own research are certainly enough to shock the student into the enormity of the job of law tracing and finding. Chapter twelve on legal writing could furnish the basis of assignments for freshmen on special topics, and perhaps might be useful in freshmen brief preparation for some of the practice court work.

7. No teacher of "Legal Method" should neglect careful study of Professor Jones' timely *Notes On The Teaching Of Legal Method*, 1 J. LEGAL EDUC. 13 (1948).

will be to fill in the gaps with challenging examples of work done and to be done. All students should at some time be introduced to the problems of judicial tenure, appointment, lawyer responsibilities, national lawyers' associations and legal service facilities (legal aid, public defender and legal service officer). The materials in this volume are excellent background. It seems that in a work of this nature only surface features of the profession are represented. In my opinion more should be given of the seamy side of the profession, of the neglected suitors on the lower levels of justice, of the many problems which must be faced by the bar for maximizing its contributions, and of the shortcomings of legal administration. For example, what are the powers for good and bad of these lawyer organizations? How do they mesh with democracy in a crisis? One of the articles discussed the American Bar Association's contributions to American foreign policy. What are those contributions? Is it the opposition to the Covenant on Human Rights? Does its support of the United Nations extend to compromising a conservative tradition? Whether or not one may agree with the particular activities of lawyer organizations in this field the fact is that American lawyers do seek to play an active role in foreign policy making. There is no time like the freshman year to impress that sense of intellectual responsibility upon the law student which will enable him to approach domestic as well as foreign policy judgments with the urge to discover the living issues involved and to seek to harmonize them. Thus the materials in this chapter are excellent provided the teacher goes beyond them and acquaints the student with the deeper issues and activities involved. But is there a book which the teacher does not have to go beyond?⁸

It is clear to me that I do not know the *best kind* of introductory course, and I am doubtful if there is one best kind. It is equally clear to me that an introductory course must be integrated with the curriculum, the faculty, the policies, and the spirit of the individual school. In a general manner one may group American law schools into three or four classes. By far the larger group consists of those schools with resources and facilities which are quite limited in comparison with the five or six vast institutions. Where courses are offered in legal institutions, legal history, legal philosophy, or where there is a large and diverse faculty subjecting the student to the varying streams of historical, social, political, sociological and philosophical thought correlated with the legal, then the emphasis of a course in *Legal Method* and *Legal System* would differ from that in institutions where these factors are absent or differ markedly. Therefore, with the same materials two or more different courses might be offered. With these variables in mind, I would seek to go beyond these materials in several ways, among which might be: (1) demonstrate the uses of specific social science materials by drawing upon the collective experience of the class—man's emotions, habits

8. Enough materials are presented on Legal Ethics to furnish the nucleus of several lectures on the subject.

and customs, his theories of living together in organized political units, his theories of making a living, his theories of right, wrong, good and just. (2) Emphasize other problems of Jurisprudence, but on a freshman level. (3) Demonstrate the means of handling legislation as authority, source of law, and as means of satisfying social needs. (4) Locate our legal system and its institutions within the evolutionary pattern of legal systems of the world and illustrate the problems of adjustment of systems in a changing world. (5) Discuss the international legal system within the context of the world's legal problems and establish a means of comparison with the national systems. (6) Highlight lawyer-community responsibilities; and (7) illustrate gaps in effective legal administration.

The great merit of these books is that they lend themselves to this form of treatment, because the authors have left many jumping off places for teacher excursion. However, if the teacher wishes solely to follow the texts he may do so and doubtless will find the process rewarding. The fact that these volumes do not include all that I would give in an introductory course, or the fact that I might place different emphasis on many of the materials, does not in my judgment illustrate that the authors have failed in their efforts. To me it means that their bait (the materials) had to appeal to many fish (market variables, e.g. teachers and schools) who would catch the hook and run with it in several different directions within the same pond. By appealing to a diverse market the authors have amply fulfilled their purpose. Being more complex, and the real meaty volume of the pair, *Legal Method* is a superior book with superb craftsmanship demonstrated by the selection, arrangement and preparation of materials. The book should be most teachable. Although less time need be devoted to the shorter *Legal System*, it bears the same marks of skill, and its materials just cannot be avoided if the student is to have any perspective, or to be vocal, about the structural legal world beyond the law school. The experimenters with introductory materials will welcome these volumes to the testing laboratory.⁹

JAY MURPHY†

9. Note the present availability of Simpson and Stone's three volumes on *LAW AND SOCIETY* (1948, 1949) as new tools for the experimenters, and the problems of using volume one, *LAW AND SOCIETY IN EVOLUTION* (1948), in an introductory course given by the reviewer, *Book Review*, 1 *ALA. LAW REV.* 333 (1949). See an experiment being born in the stimulating discussion by Professor Ehrenzweig in 2 *J. LEGAL EDUC.* 359 (1950) through the use of the Simpson and Stone materials.

† Professor of Law, University of Alabama Law School.